

109TH CONGRESS
1ST SESSION

S. 2065

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2005

Mr. ENZI (for himself, Mr. ISAKSON, Mr. CRAIG, Mr. BURR, Mr. ROBERTS, Mr. SESSIONS, Mr. WARNER, and Mr. GREGG) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Occupational Safety Partnership Act”.

6 (b) REFERENCE.—Whenever in this Act an amend-
7 ment or repeal is expressed in terms of an amendment
8 to, or repeal of, a section or other provision, the reference
9 shall be considered to be made to a section or other provi-

1 sion of the Occupational Safety and Health Act of 1970
 2 (29 U.S.C. 651 et seq.).

3 **SEC. 2. PURPOSE.**

4 Section 2(b) of the Act (29 U.S.C. 651(b)) is amend-
 5 ed—

6 (1) in paragraph (13), by striking the period
 7 and inserting “; and”; and

8 (2) by adding at the end the following:

9 “(14) by increasing the joint cooperation of em-
 10 ployers, employees, and the Secretary of Labor in
 11 the effort to ensure safe and healthful working con-
 12 ditions for employees.”.

13 **SEC. 3. THIRD PARTY CONSULTATION SERVICES PROGRAM.**

14 (a) PROGRAM.—The Act (29 U.S.C. 651 et seq.) is
 15 amended by inserting after section 8 the following:

16 **“SEC. 8A. THIRD PARTY CONSULTATION SERVICES PRO-
 17 GRAM.**

18 “(a) PURPOSE.—It is the purpose of this section to
 19 encourage employers to conduct voluntary safety and
 20 health audits using the expertise of qualified safety and
 21 health consultants and to proactively seek individualized
 22 solutions to workplace safety and health concerns.

23 “(b) ESTABLISHMENT OF PROGRAM.—

24 “(1) IN GENERAL.—Not later than 18 months
 25 after the date of enactment of this section, the Sec-

1 retary shall establish and implement, by regulation,
2 a program that qualifies individuals to provide con-
3 sultation services to employers to assist employers in
4 the identification and correction of safety and health
5 hazards in the workplaces of employers.

6 “(2) ELIGIBILITY.—The following individuals
7 shall be eligible to be qualified under this program
8 as certified safety and health consultants:

9 “(A) An individual who is licensed by a
10 State authority as a physician, industrial hy-
11 gienist, professional engineer, safety engineer,
12 safety professional, or registered nurse.

13 “(B) An individual who has been employed
14 as an inspector for a State plan State or as a
15 Federal occupational safety and health inspec-
16 tor for not less than a 5-year period.

17 “(C) An individual who is qualified in an
18 occupational health or safety field by an organi-
19 zation whose program has been accredited by a
20 nationally recognized private accreditation orga-
21 nization or by the Secretary.

22 “(D) An individual who has not less than
23 10 years experience in workplace safety and
24 health.

1 “(E) Other individuals determined to be
2 qualified by the Secretary.

3 “(3) GEOGRAPHICAL SCOPE OF CONSULTATION
4 SERVICES.—A consultant qualified under this pro-
5 gram may provide consultation services in any State.

6 “(4) LIMITATION BASED ON EXPERTISE.—A
7 consultant qualified under this program may only
8 provide consultation services to an employer with re-
9 spect to a worksite if the work performed at that
10 worksite coincides with the particular expertise of
11 the individual.

12 “(c) SAFETY AND HEALTH REGISTRY.—The Sec-
13 retary shall develop and maintain a registry that includes
14 all consultants that are qualified under the program under
15 subsection (b)(1) to provide the consultation services de-
16 scribed in subsection (b) and shall publish and make such
17 registry readily available to the general public.

18 “(d) DISCIPLINARY ACTIONS.—The Secretary may
19 revoke the status of a consultant, or the participation of
20 an employer in the third party consultation program, if
21 the Secretary determines that the consultant or em-
22 ployer—

23 “(1) has failed to meet the requirements of the
24 program; or

1 “(2) has committed malfeasance, gross neg-
2 ligence, collusion or fraud in connection with any
3 consultation services provided by the qualified con-
4 sultant.

5 “(e) PROGRAM REQUIREMENTS.—

6 “(1) GENERAL REQUIREMENTS.—The consulta-
7 tion services described in subsection (b), and pro-
8 vided by a consultant qualified under this program
9 shall, at a minimum, consist of the following ele-
10 ments:

11 “(A) A comprehensive, on-site, survey and
12 audit of the participating employer’s workplace
13 and operations by the consultant.

14 “(B) The preparation of a consultation re-
15 port by the consultant.

16 The Secretary may, by regulation, prescribe addi-
17 tional requirements for qualifying services.

18 “(2) CONSULTATION REPORT.—

19 “(A) IN GENERAL.—Following the consult-
20 ant’s physical survey of the employer’s work-
21 place and operations, the consultant shall pre-
22 pare and deliver to the employer a written re-
23 port summarizing the consultant’s health and
24 safety findings and recommendations. Such

1 consultation report shall, at a minimum, con-
2 tain the following elements:

3 “(i) The findings of the consultant’s
4 health and safety audit, and, where appli-
5 cable, appropriate remedial recommenda-
6 tions.

7 “(ii) A recommended health and safe-
8 ty program and an action plan as de-
9 scribed in this paragraph.

10 The Secretary may, by regulation, prescribe ad-
11 ditional required elements for qualifying re-
12 ports.

13 “(B) AUDIT AND RECOMMENDATIONS.—

14 The consultation report shall include an evalua-
15 tion of the workplace of the participating em-
16 ployer to determine if the employer is in compli-
17 ance with the requirements of this Act, includ-
18 ing any regulations promulgated pursuant to
19 this Act. The report shall identify any practice
20 or condition the consultant believes to be a vio-
21 lation of this Act, and will set out any appro-
22 priate corrective measures to address such iden-
23 tified practice or condition.

24 “(C) SAFETY AND HEALTH PROGRAM.—

25 The consultation report shall contain a rec-

ommended safety and health plan designed to reduce injuries, illness, and fatalities and to otherwise manage workplace health and safety.

Such safety and health program shall—

“(i) be appropriate to the conditions of the workplace involved;

“(ii) be in writing, and contain policies, procedures, and practices designed to recognize and protect employees from occupational safety and health hazards, such procedures to include provisions for the identification, evaluation, and prevention or control of workplace hazards;

“(iii) be based upon the professional judgment of the consultant and include such elements as are necessary to the specific worksite involved as determined by the consultant and employer;

“(iv) contain provisions for the periodic review and modification of the program as circumstances warrant;

“(v) be developed and implemented with the participation of affected employees;

1 “(vi) make provision for the effective
2 safety and health training of all personnel,
3 and the dissemination of appropriate
4 health and safety information to all per-
5 sonnel; and

6 “(vii) contain appropriate procedures
7 for the reporting of potential hazards, acci-
8 dents and near accidents.

9 The Secretary may, by regulation, prescribe ad-
10 ditional specific elements that may be required
11 for any qualifying program.

12 “(D) ACTION PLAN.—The consultation re-
13 port shall also contain a written action plan
14 that shall—

15 “(i) outline the specific steps that
16 must be accomplished by the employer
17 prior to receiving a certificate of compli-
18 ance;

19 “(ii) be established in consultation
20 with the employer; and

21 “(iii) address in detail—

22 “(I) the employer’s correction of
23 all identified safety and health condi-
24 tions or practices that are in violation

1 of this Act, with applicable time-
2 frames; and

3 “(II) the steps necessary for the
4 employer to implement an effective
5 safety and health program, with appli-
6 cable timeframes.

7 “(3) CERTIFICATE OF COMPLIANCE.—Upon
8 completion of the steps described in the Action Plan
9 the qualified consultant shall issue to the employer
10 a Certificate of Compliance in a form prescribed by
11 the Secretary.

12 “(f) EXEMPTION FROM CIVIL PENALTIES FOR COM-
13 PLIANCE.—

14 “(1) IN GENERAL.—If an employer receives a
15 certificate of compliance, the employer shall be ex-
16 empt from the assessment of any civil penalty under
17 section 17 for a period of 2 years after the date on
18 which the employer receives such certificate.

19 “(2) EXCEPTIONS.—An employer shall not be
20 exempt under paragraph (1)—

21 “(A) if the employer has not made a good
22 faith effort to remain in compliance as required
23 under the certificate of compliance; or

1 “(B) if there has been a fundamental
2 change in the hazards of the workplace after
3 the issuance of the certificate.

4 “(g) RIGHT TO INSPECT.—Nothing in this section
5 shall be construed to affect the rights of the Secretary to
6 inspect and investigate worksites covered by a certificate
7 of compliance.

8 “(h) RENEWAL REQUIREMENTS.—An employer that
9 is granted a certificate of compliance under this section
10 may receive a 2 year renewal of the certificate if a quali-
11 fied consultant conducts a complete onsite safety and
12 health survey to ensure that the safety and health pro-
13 gram has been effectively maintained or improved, work-
14 place hazards are under control, and elements of the safe-
15 ty and health program are operating effectively.

16 “(i) NON-FIXED WORKSITES.—With respect to em-
17 ployer worksites that do not have a fixed location, a certifi-
18 cate of compliance shall only apply to that worksite which
19 satisfies the criteria under this section and such certificate
20 shall not be portable to any other worksite. This section
21 shall not apply to employers that perform essentially the
22 same work, utilizing the same equipment, at each non-
23 fixed worksite.

24 “(j) ACCESS TO RECORDS.—Any records relating to
25 consultation services provided by an individual qualified

1 under this program, or records, reports, or other informa-
 2 tion prepared in connection with safety and health inspec-
 3 tions, audits, or reviews conducted by or for an employer
 4 and not required under this Act, shall not be admissible
 5 in a court of law or administrative proceeding or enforce-
 6 ment proceeding against the employer except that such
 7 records may be used as evidence for purposes of a discipli-
 8 nary action under subsection (d).”.

9 **SEC. 4. PREVENTION OF ALCOHOL AND SUBSTANCE ABUSE.**

10 The Act (29 U.S.C. 651 et seq.) is amended by add-
 11 ing at the end the following:

12 **“SEC. 34. ALCOHOL AND SUBSTANCE ABUSE TESTING.**

13 “(a) PROGRAM PURPOSE.—In order to secure a safe
 14 workplace, employers may establish and carry out an alco-
 15 hol and substance abuse testing program in accordance
 16 with subsection (b).

17 “(b) FEDERAL GUIDELINES.—

18 “(1) REQUIREMENTS.—An alcohol and sub-
 19 stance abuse testing program described in subsection
 20 (a) shall meet the following requirements:

21 “(A) SUBSTANCE ABUSE.—A substance
 22 abuse testing program shall permit the use of
 23 onsite or offsite testing.

24 “(B) ALCOHOL.—The alcohol testing com-
 25 ponent of the program shall take the form of al-

1 cohol breath analysis and shall conform to any
2 guidelines developed by the Secretary of Trans-
3 portation for alcohol testing of mass transit em-
4 ployees under the Department of Transpor-
5 tation and Related Agencies Appropriations
6 Act, 1992.

7 “(2) DEFINITION.—For purposes of this section
8 the term ‘alcohol and substance abuse testing pro-
9 gram’ means any program under which test proce-
10 dures are used to take and analyze blood, breath,
11 hair, urine, saliva, or other body fluids or materials
12 for the purpose of detecting the presence or absence
13 of alcohol or a drug or its metabolites. In the case
14 of urine testing, the confirmation tests must be per-
15 formed in accordance with the mandatory guidelines
16 for Federal workplace testing programs published by
17 the Secretary of Health and Human Services on April
18 11, 1988, at section 11979 of title 53, Code of Fed-
19 eral Regulations (including any amendments to such
20 guidelines). Proper laboratory protocols and proce-
21 dures shall be used to assure accuracy and fairness,
22 and, laboratories must be subject to the requirements
23 of subpart B of the mandatory guidelines, State cer-
24 tification, the Clinical Laboratory Improvements Act
25 of the College of American Pathologists.

1 “(c) TEST REQUIREMENTS.—This section shall not
2 be construed to prohibit an employer from requiring—

3 “(1) an applicant for employment to submit to
4 and pass an alcohol or substance abuse test before
5 employment by the employer; or

6 “(2) an employee, including managerial per-
7 sonnel, to submit to and pass an alcohol or sub-
8 stance abuse test—

9 “(A) on a for-cause basis or where the em-
10 ployer has reasonable suspicion to believe that
11 such employee is using or is under the influence
12 of alcohol or a controlled substance;

13 “(B) where such test is administered as
14 part of a scheduled medical examination;

15 “(C) in the case of an accident or incident,
16 involving the actual or potential loss of human
17 life, bodily injury, or property damage;

18 “(D) during the participation of an em-
19 ployee in an alcohol or substance abuse treat-
20 ment program, and for a reasonable period of
21 time (not to exceed 5 years) after the conclu-
22 sion of such program; or

23 “(E) on a random selection basis in work
24 units, locations, or facilities.

1 “(d) CONSTRUCTION.—Nothing in this section shall
 2 be construed to require an employer to establish an alcohol
 3 and substance abuse testing program for applicants or em-
 4 ployees or make employment decisions based on such test
 5 results.

6 “(e) PREEMPTION.—The provisions of this section
 7 shall preempt any provision of State law to the extent that
 8 such State law is inconsistent with this section.

9 “(f) INVESTIGATIONS.—The Secretary is authorized
 10 to conduct testing of employees (including managerial per-
 11 sonnel) of an employer for use of alcohol or controlled sub-
 12 stances during any investigations of a work-related fatality
 13 or serious injury. Such testing shall be done as soon as
 14 practicable after the incident giving rise to such work-re-
 15 lated fatality or serious injury.”.

16 **SEC. 5. VOLUNTARY PROTECTION PROGRAMS.**

17 (a) COOPERATIVE AGREEMENTS.—The Secretary of
 18 Labor shall establish cooperative agreements with employ-
 19 ers to encourage the establishment of comprehensive safe-
 20 ty and health management systems that include—

- 21 (1) requirements for systematic assessment of
- 22 hazards;
- 23 (2) comprehensive hazard prevention, mitiga-
- 24 tion, and control programs;

1 (3) active and meaningful management and em-
2 ployee participation in the voluntary program de-
3 scribed in subsection (b); and

4 (4) employee safety and health training.

5 (b) VOLUNTARY PROTECTION PROGRAM.—

6 (1) IN GENERAL.—The Secretary of Labor shall
7 establish and carry out a voluntary protection pro-
8 gram (consistent with subsection (a)) to encourage
9 excellence and recognize the achievement of excel-
10 lence in both the technical and managerial protec-
11 tion of employees from occupational hazards.

12 (2) PROGRAM REQUIREMENT.—The voluntary
13 protection program shall include the following:

14 (A) APPLICATION.—Employers who volun-
15 teer under the program shall be required to
16 submit an application to the Secretary of Labor
17 demonstrating that the worksite with respect to
18 which the application is made meets such re-
19 quirements as the Secretary of Labor may re-
20 quire for participation in the program.

21 (B) ONSITE EVALUATIONS.—There shall
22 be onsite evaluations by representatives of the
23 Secretary of Labor to ensure a high level of
24 protection of employees. The onsite visits shall
25 not result in enforcement of citations under the

1 Occupational Safety and Health Act of 1970
2 (29 U.S.C. 651 et seq.).

3 (C) INFORMATION.—Employers who are
4 approved by the Secretary of Labor for partici-
5 pation in the program shall assure the Sec-
6 retary of Labor that information about the
7 safety and health program shall be made read-
8 ily available to the Secretary of Labor to share
9 with employees.

10 (D) REEVALUATIONS.—Periodic reevalua-
11 tions by the Secretary of Labor of the employ-
12 ers shall be required for continued participation
13 in the program.

14 (3) EXEMPTIONS.—A site with respect to which
15 a program has been approved shall, during partici-
16 pation in the program be exempt from inspections or
17 investigations and certain paperwork requirements
18 to be determined by the Secretary of Labor, except
19 that this paragraph shall not apply to inspections or
20 investigations arising from employee complaints, fa-
21 talities, catastrophes, or significant toxic releases.

22 **SEC. 6. EXPANDED ACCESS TO VVP FOR SMALL BUSI-**
23 **NESSES.**

24 The Secretary of Labor shall establish and imple-
25 ment, by regulation, a program to increase participation

1 by small businesses (as the term is defined by the Admin-
 2 istrator of the Small Business Administration) in the vol-
 3 untary protection program through outreach and assist-
 4 ance initiatives and the development of program require-
 5 ments that address the needs of small businesses.

6 **SEC. 7. TECHNICAL ASSISTANCE PROGRAM.**

7 (a) IN GENERAL.—Section 21(c) of the Act (29
 8 U.S.C. 670(c)) is amended—

9 (1) by striking “(c) The” and inserting “(c)(1)
 10 The”;

11 (2) by striking “(1) provide” and inserting “(A)
 12 provide”;

13 (3) by striking “(2) consult” and inserting “(B)
 14 consult”; and

15 (4) by adding at the end the following:

16 “(2)(A) The Secretary shall, through the authority
 17 granted under section 7(c) and paragraph (1), enter into
 18 cooperative agreements with States for the provision of
 19 consultation services by such States to employers con-
 20 cerning the provision of safe and healthful working condi-
 21 tions.

22 “(B)(i) As provided in clause (ii), the Secretary shall
 23 reimburse a State that enters into a cooperative agree-
 24 ment under subparagraph (A) in an amount that equals

1 90 percent of the costs incurred by the State for the provi-
2 sion of consultation services under such agreement.

3 “(ii) A State shall be reimbursed by the Secretary
4 for 90 percent of the costs incurred by the State for the
5 provision of—

6 “(I) training approved by the Secretary for
7 State personnel operating under a cooperative agree-
8 ment; and

9 “(II) specified out-of-State travel expenses in-
10 curred by such personnel.

11 “(iii) A reimbursement paid to a State under this
12 subparagraph shall be limited to costs incurred by such
13 State for the provision of consultation services under this
14 paragraph and the costs described in clause (ii).”.

15 (b) PILOT PROGRAM.—Section 21 of the Act (29
16 U.S.C. 670) is amended by adding at the end the fol-
17 lowing:

18 “(e)(1) Not later than 90 days after the date of en-
19 actment of this subsection, the Secretary shall establish
20 and carry out a pilot program in 3 States to provide expe-
21 dited consultation services, with respect to the provision
22 of safe and healthful working conditions, to employers that
23 are small businesses (as the term is defined by the Admin-
24 istrator of the Small Business Administration). The Sec-

1 retary shall carry out the program for a period not to ex-
2 ceed 2 years.

3 “(2) The Secretary shall provide consultation services
4 under paragraph (1) not later than 4 weeks after the date
5 on which the Secretary receives a request from an em-
6 ployer.

7 “(3) The Secretary may impose a nominal fee to an
8 employer requesting consultation services under para-
9 graph (1). The fee shall be in an amount determined by
10 the Secretary. Employers paying a fee shall receive pri-
11 ority consultation services by the Secretary.

12 “(4) In lieu of issuing a citation under section 9 to
13 an employer for a violation found by the Secretary during
14 a consultation under paragraph (1), the Secretary shall
15 permit the employer to carry out corrective measures to
16 correct the conditions causing the violation. The Secretary
17 shall conduct not more than 2 visits to the workplace of
18 the employer to determine if the employer has carried out
19 the corrective measures. The Secretary shall issue a cita-
20 tion as prescribed under section 5 if, after such visits, the
21 employer has failed to carry out the corrective measures.

22 “(5) Not later than 90 days after the termination of
23 the program under paragraph (1), the Secretary shall pre-
24 pare and submit a report to the appropriate committees

1 of Congress that contains an evaluation of the implemen-
 2 tation of the pilot program.”.

3 **SEC. 8. CONTINUING EDUCATION AND PROFESSIONAL CER-**
 4 **TIFICATION FOR CERTAIN OCCUPATIONAL**
 5 **SAFETY AND HEALTH ADMINISTRATION PER-**
 6 **SONNEL.**

7 Section 8 of the Act (29 U.S.C. 657) is amended by
 8 adding at the end the following:

9 “(i) Any Federal employee responsible for enforcing
 10 this Act shall, not later than 2 years after the date of
 11 enactment of this subsection or 2 years after the initial
 12 employment of the employee involved, meet the eligibility
 13 requirements prescribed under subsection (b)(2) of section
 14 8A.

15 “(j) The Secretary shall ensure that any Federal em-
 16 ployee responsible for enforcing this Act who carries out
 17 inspections or investigations under this section, receive
 18 professional education and training at least every 5 years
 19 as prescribed by the Secretary.”.

20 **SEC. 9. OSHA AND INDUSTRY TRAINING EXCHANGE DEM-**
 21 **ONSTRATION PROGRAM.**

22 (a) IN GENERAL.—The Secretary of Labor, acting
 23 through the Occupational Safety and Health Administra-
 24 tion, is authorized to develop and implement at least one
 25 training and educational exchange program with a spe-

1 cialty trade in the construction industry for the purpose
2 of—

3 (1) facilitating the exchange of expertise and
4 ideas related to the interpretation, application, and
5 implementation of Federal occupational safety and
6 health standards and regulations applicable to the
7 specialty trade involved (referred to in this section
8 as “OSHA Rules”);

9 (2) improving collaboration and coordination
10 between the Occupational Safety and Health Admin-
11 istration and such specialty trade regarding OSHA
12 Rules;

13 (3) identifying OSHA Rules which the specialty
14 trade and Occupational Safety and Health Adminis-
15 tration compliance officers have repeatedly found to
16 be difficult to interpret, apply, or implement;

17 (4) allowing qualified safety directors from the
18 specialty trade to train such compliance officers and
19 others within the Administration responsible for
20 writing and interpreting OSHA Rules, both on the
21 jobsite and off, on the unique nature of the specialty
22 trade and the difficulties contractors and safety di-
23 rectors encounter when attempting to comply with
24 OSHA Rules as well as the best practices within the
25 specialty trade;

1 (5) seeking the means to ensure greater compli-
2 ance with the identified OSHA Rules, and reducing
3 the number of citations based on any misunder-
4 standing by such compliance officers as to the scope
5 and application of an OSHA Rule or the unique na-
6 ture of the workplace construction; and

7 (6) establishing within the Occupational Safety
8 and Health Administration Training Institute a
9 trade-specific curriculum to be taught jointly by
10 qualified trade safety directors and compliance offi-
11 cers.

12 (b) INITIAL PROGRAM.—The initial training and edu-
13 cational exchange program shall be established under sub-
14 section (a) with the masonry construction industry.

15 (c) REPORTS.—Upon the expiration of the 2-year
16 program under subsection (a), the Administrator of the
17 Occupational Safety and Health Administration, jointly
18 with specialty trades that participate in programs under
19 such subsection, shall prepare and submit to the Com-
20 mittee on Health, Education, Labor, and Pensions of the
21 Senate and the Committee on Education and Workforce
22 of the House of Representatives a report on the activities
23 and results of the training and educational exchange pro-
24 gram.

1 (d) DEFINITION.—In this section, the term “qualified
2 safety director” means an individual who has, at a min-
3 imum, taken the 10-hour Occupational Safety and Health
4 Administration course and been employed a minimum of
5 5 years as a safety director in the construction industry.

6 (e) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated, such sums as may be
8 necessary to carry out this section.

9 (f) TERMINATION.—The programs established under
10 subsection (a) shall terminate on the date that is 2 years
11 after the date on which the first program is so established.

○